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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|-------------------------------|---------------------------|------------------|
| 10/764,907 | 01/26/2004 | Patrick Mitchel Howard Lumley | SIM.07/D1 | 2787 |
| 25871 | 7590 | 11/04/2004 | | |
| SWANSON & BRATSCHUN L.L.C. 1745 SHEA CENTER DRIVE SUITE 330 HIGHLANDS RANCH, CO 80129 | | | EXAMINER RAO, G NAGESH | |
| | | | ART UNIT 1722 | PAPER NUMBER |

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|------------------------|---------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/764,907 | LUMLEY ET AL. |
| | Examiner | Art Unit |
| | G. Nagesh Rao | 1722 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(h)

Status

1) Responsive to communication(s) filed on ____.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) _____ is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) Claim(s) _____ is/are allowed.
6) Claim(s) 1-7 is/are rejected.
7) Claim(s) _____ is/are objected to.
8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a))

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-3 rejected under 35 U.S.C. 102(b) as being anticipated by Froeschke (US Patent No. 4,623,307).

Froeschke 307 teaches a device for extruding flowable substances, and the ability for the device to act like a diffuser, allowing for liquid and viscous materials to flow through (column 1 lines 50-65).

With respect to claims 1-3 Froeschke 307 is comprised of a “nozzle” bar which reads on claimed invention’s “diffuser” bar and is formed straight and disposed parallel to the axis of rotation which is comparable to claimed “elongated body” (column 1 lines 46-47). The “nozzle” bar is centered along a groove on the body part of the inner container, where said groove is anticipating said “centering device” and inner container reads on said “bore” of applicant’s claimed invention (column 1 lines 47-49).

The use of the applicant’s “diffuser-bar” is just a recitation for intended use in pastillation machines.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

2. Claims 4-5 rejected under 35 U.S.C. 103(a) as being unpatentable over Froeschke (US Patent No. 4,623,307) in view of Lambert (US Patent No. 3,748,998).

Froeschke 307 does not address the material makeup of the bar.

Lambert 998 teaches the construction of an "air-bar" from metal for air diffuser systems. It is taught that these types of bars are constructed to withstand high temperatures (column 1 lines 7-10 and 23-30).

Therefore it is obvious to one with skill in the art to modify the Froeschke 307 bar with the teachings of Lambert 998 by using metal as the choice of material to construct the bar so that it may be durable and heat-resistant.

3. Claims 6-7 rejected under 35 U.S.C. 103(a) as being unpatentable over Froeschke (US Patent No. 4,623,307) in view of Wark (US Patent No. 6,588,598 B2).

With respect to claims 6-7 Froeschke 307 nozzle bar lacks the "tabs arrangement" of applicant's claimed diffuser bar.

Wark (US Patent 6,588,598 B2) demonstrates the use of tabs on devices containing bars as means of locking and supporting the bars in place (column 4 lines 48-56 and figure 1).

To one with ordinary skill in the art the tabs of Wark are seen as an equivalent to the tabs of claimed invention in helping center the bar in place. It would be obvious to incorporate the tabs into Froeschke's 307 bar,

replacing the "centered groove", as an alternative means of providing structural stability for the bar inside the apparatus.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to G. Nagesh Rao whose telephone number is (571) 272-2946. The examiner can normally be reached on 9AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Benjamin Utech can be reached on (571) 272-1137. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Benjamin L. Utech
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SUPERVISORY PATENT EXAMINER
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GNR